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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE, CALIFORNIA**

Xiling CHEN

Plaintiff,

Case No. C 07-4698 JW

vs.

Alberto Gonzales, Attorney General of the
United States; Michael Chertoff, Secretary of the
Department of Homeland Security; Emilio Gonzalez
Director of United States Citizenship & Immigration
Services; Robert Mueller, Director of the Federal
Bureau of Investigations; Gerard Heinauer,
Director of the Nebraska Service Center

[PROPOSED] ORDER
GRANTING PETITIONERS'
MOTION FOR
SUMMARY JUDGMENT

Defendants

The motion of Petitioner Xiling Chen for summary judgment came on regularly for hearing before this Court on April 21, 2008. Petitioner filed a petition for writ of mandamus based on Respondents' delay in adjudicating her application for lawful permanent residency. The application has been pending for over three years and ten months.

Mandamus is an extraordinary remedy and is available to compel a federal official to perform a duty only if: (1) the individual's claim is clear and certain; (2) the official's duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt, and (3) no other adequate remedy is available. Patel v. Reno, 134 F.3d 929, 931 (9th

1 Cir.1997); Azurin v. Von Raab, 803 F.2d 993, 995 (9th Cir.1986). The Court finds that
 2 both the Immigration and Nationality Act, and its implementing regulations, create a
 3 mandatory and non-discretionary duty that Respondents adjudicate the pending
 4 applications for permanent residency. See §8 C.F.R. § 245.2. The Court further finds that
 5 the Administrative Procedures Act (“APA”) requires that such applications be adjudicated
 6 within a ‘reasonable time.’ 5 U.S.C. §555(b). The Court finds that the three years and ten
 7 months delay in adjudicating Petitioner’s application is unreasonable. See e.g. Yu v.
 8 Brown, 36 F.Supp.2d 922, 928-32 (D.N.M.1999), (applying the APA’s reasonable
 9 requirement to similar regulatory provisions); Kim v. Ashcroft, 340 F. Supp 2d 384, 391-
 10 92 S.D.N.Y.2004)(same).
 11

12 After considering the motion for summary judgment, the parties’ responses,
 13 arguments of counsel and all other matters presented to the Court, IT IS HEREBY
 14 ORDERED THAT Plaintiff’s motion for summary judgment be and hereby is
 15 GRANTED. The Court orders that the Petitioner’s application for lawful permanent
 16 residency be adjudicated within ten (10) days of this order. In case of visa becomes
 17 unavailable, the Court shall retain jurisdiction over this matter and orders that Petitioner’s
 18 application be adjudicated within thirty (30) days of an immigrant visa becoming
 19 available to her.
 20
 21

22 Date: _____

23 _____
 24 JAMES WARE
 25 United States District Judge
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